

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Wings Communications, Inc. d/b/a WELE Radio |) | File No. EB-02-TP-116 |
| |) | |
| Owner of Antenna Structure Registration |) | NAL/Acct. No. 200332700010 |
| Number 1062835 |) | |
| Ormond Beach, Florida |) | FRN 0004-3312-60 |

FORFEITURE ORDER

Adopted: May 17, 2004

Released: May 19, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Wings Communications, Inc. (“Wings”) d/b/a WELE Radio. for willful violation of Section 17.51(a) of the Commission’s Rules (“Rules”).¹ The violation involves Wings’ failure to continuously exhibit all red obstruction lighting on its tower from sunset to sunrise.

2. On December 2, 2002, the Commission’s Tampa, Florida Field Office (“Tampa Office”) issued a *Notice of Apparent Liability* (“*NAL*”) to Wings for a forfeiture in the amount of ten thousand dollars (\$10,000) citing violation of Section 17.51(a) of the Commission’s Rules.² Wings filed its response to the *NAL* requesting cancellation of the forfeiture on January 2, 2003.

II. BACKGROUND

3. On October 1, 2002, during an evening inspection of Wings’ AM four tower directional antenna array, located in Ormond Beach, Florida, two Commission agents from the Tampa Office observed that one of the antenna structures³ was not lighted by a red beacon during prescribed evening hours. The inspection occurred as the result of a complaint to the Tampa Office alleging a six week outage of the required red beacons for Wings’ antenna.⁴

4. On October 1, 2002, as a result of the first inspection, a Tampa agent called the FAA and determined that no Notice To Airmen (NOTAM) had been given the FAA regarding the lighting failure.⁵

¹ 47 C.F.R. §§ 17.51(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332700010 (Enf. Bur., Tampa Office, released December 2, 2002).

³ Antenna Structure Registration number 1062835, located at 29° 16’ 0.9” North Latitude, 081° 04’ 53” West Longitude.

⁴ The four antenna structures that comprise the directional AM array are required to be individually lighted.

⁵ 47 C.F.R. § 17.48(a) requires the tower owner to immediately inform the FAA of any light failure not repaired within 30 minutes. In its January 2, 2003 response, Wings admits that it had not notified the FAA as of October 1, 2002.

Subsequently, on October 8, 2002, the same agent searched the Commission's Antenna Structure Registration ("ASR") database and determined Wings was listed as the owner of the antenna structure.⁶

5. On December 2, 2002, the Tampa Office issued a *NAL* to Wings for the violation observed on October 1, 2002. In its January 2, 2003 response, Wings did not dispute the facts set forth in the *NAL* and admitted that it knew the light was out and that it failed to notify the FAA of the outage.⁷ Wings' response included a recitation of its unsuccessful repair efforts as justification for its request for forfeiture cancellation.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁸ Section 1.80 of the Rules,⁹ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining Wings' response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.¹⁰

7. Section 17.51(a) of the Rules requires that all red obstruction lighting be exhibited continuously unless otherwise specified. Wings seeks cancellation of the forfeiture based upon its assertion that the problem was intermittent and that it made multiple attempts to resolve the problem. We disagree that this justifies cancellation. Wings knew of the lighting problem for months and it was incumbent upon it to correct the problem, which posed a safety hazard. That Wings was unable to secure either an electrical or tower company to fix the lighting does not mitigate its violation of Section 17.51(a) of the Rules. The responsibility to comply with the Rules is the antenna structure owner's,¹¹ and an unsuccessful attempt to comply is insufficient. Wings also seeks to attribute its failure to notify the FAA to an employee. However, the Commission has long held that licensees and Commission regulatees are responsible for the acts and omissions of their employees and independent contractors.¹² Moreover,

⁶ The Commission's Antenna Structure Registration database lists Wings Communications, Inc. dba WELE Radio as the owner of the instant antenna structure, registration number 1062835, located at Ormand Beach, Florida. The ASR also set forth a requirement to maintain a night time red beacon lighting system.

⁷ Wings' January 2, 2003 response acknowledges its awareness of the light's failure and seeks to attribute its failure to notify the FAA to an employee.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ 47 U.S.C. § 503(b)(2)(D).

¹¹ See *Econopage of Cleveland, Inc.*, 16 FCC Rcd 2989 (Enf. Bur. 2001) (Licensees are "expected to know and comply with the Commission's Rules, and will not be excused for violations thereof, absent clear mitigating circumstances.") See also *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970).

¹² See *Eure Family Ltd. Partnership*, 16 FCC Rcd 21302 (Enf. Bur. 2001), *recon. denied*, 17 FCC Rcd 7402 (Enf. Bur. 2002), *review denied*, 17 FCC Rcd 21861 (2002).

Wings could have complied with the Commission's Rules simply by informing the FAA of the light failure.¹³ We find that Wings has not provided any basis for cancellation or reduction of the forfeiture.

8. On the basis of the FCC agents' observations on October 1, 2002, during their investigations, and the admission in Wings' response, we find that Wings willfully¹⁴ violated Section 17.51(a) of the Rules by failing to exhibit the required red beacon evening obstruction lighting on its tower.¹⁵

9. We have examined Wings' response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Wings willfully violated Section 17.51(a) of the Rules. Moreover, we are not persuaded by Wings' mitigation claims. Accordingly, we find that there is no basis to cancel or reduce the assessed forfeiture amount.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁶ Wings **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of a total of ten thousand dollars (\$10,000), for failure to light the captioned antenna structure, in willful violation of Section 17.51(a) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁷ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332700010 and FRN 0004-3312-60. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

¹³ 47 C.F.R. § 17.48(a).

¹⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,'... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁵ Wings informed the Commission on March 18, 2003, that the tower had been repaired and the lights were working.

¹⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Doug Wilhite, President, Wings Communications, Inc., d/b/a WELE Radio, 432 South Nova Road, Ormond Beach, Florida 32174.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau